

Appl. No. 09/889,255
Atty. Docket No. CM2000XML-S
Amdt. dated 12/06/2004
Reply to Office Action of 10/20/2004
Customer No. 27752

REMARKS

Claims 1-4 and 6-20 are pending in the present application. No additional claims fee is believed to be due.

Rejections Under 35 USC §103(a) Over Schulein

According to the Office Action, the rejection of claims 9 and 20 under 35 USC § 103(a) as being unpatentable over Schulein (U.S. Patent No. 6,268,197) is maintained for the reasons cited in the previous Office Action mailed 5 December, 2002. Applicants respectfully submit that Claim 20 was newly added *after* the previous Office Action, a fact that is confirmed in the current Office Action in paragraph 1 of page 2. If however, a new § 103(a) rejection of Claim 20 were to be later imposed, Applicants respectfully submit that neither that rejection, nor the current 103(a) rejection of Claim 9, could stand since both claims ultimately depend from Claim 1. Since Claim 1 is not obvious in light of Schulein, as submitted by Applicants below, Claims 9 and 20 are also not obvious in light of Schulein. Thus Applicants respectfully request withdrawal of the 103(a) rejection of Claims 9 and 20.

Rejections Under 35 USC §102(e) Over Schulein

The Office Action indicates that Claims 1-4, 6-8 and 10-19 have been newly rejected under 35 USC § 102(e) as being unpatentable over Schulein, U.S. Patent No. 6,268,197. The Office Action also indicates withdrawal of the rejection under 103(a) of Claims 1-4, 6-8 and 10-11 over the very same Schulein reference. Applicants submit that the new rejection under 102(e) and the withdrawal of the old 103(a) rejection is inconsistent and consequently request that the new rejection be withdrawn.

According to MPEP §2143, to establish a *prima facie* case of obviousness under § 103, the cited reference must teach or suggest all the claim limitations. The same is required under §102 (a), (b) and (e). See for instance MPEP § 2131, which citing *Verdegaal Bros. v. Union Oil Co. of California*, indicates that, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Thus, in this respect, the requirements for both a § 103(a) obviousness rejection and a § 102(e) anticipation rejection are the same. Since: (1) the §§ 103(a) and 102(e) requirements are the same; (2) the §§ 103(a) and 102(e) rejections to Claims 1-4, 6-8 and 10-11 have been made over

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the identical piece of art; and (3) newly added Claims 12-19 ultimately depend from Claim 1, it follows that since the § 103(a) rejection of Claims 1-4, 6-8 and 10-11 has been overcome via claim amendment, the subsequent § 102(e) rejection of these claims and the claims that depend or ultimately depend therefrom cannot stand. Applicants therefore respectfully request withdrawal of the § 102(e) rejection and allowance of the claims as they currently stand.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under § 103(a) and § 102(e). Early and favorable action in the case is respectfully requested. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-4 and 6-20 is respectfully requested.

Respectfully submitted,

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